

Formal Action # 14428

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

STATE OF TENNESSEE,
Plaintiff,

v.

FEDERATED DEPARTMENT STORES,
INC., a delaware Corporation, and
subsidiaries, FDS NATIONAL
BANK and FACS GROUP, INC.,
Defendant.

AGREED FINAL JUDGEMENT

Plaintiff, the State of Tennessee, by and through John Knox Walkup, the Attorney General and Reporter of the State of Tennessee at the request of the Division of Consumer Affairs of the Department of Commerce and Insurance, and Defendant, Federated Department Stores, Inc. Including subsidiaries, FDS National Bank, and FACS Group, Inc. (hereinafter collectively referred to as "Federated" or "Defendant"), as evidenced by their signatures, do consent to the entry of this Agreed Final Judgment ("Judgment" or "Order") and its provisions.

Plaintiff, State of Tennessee, commenced this action on February 17, 1998, pursuant to the Tennessee

Consumer Protection Act of 1977, Tenn. Code Ann. §47-18-101, et seq. ("Consumer Protection Act").

Defendant waived service of the Summons and Complaint and has appeared by and through its attorneys, Edgar C. Snow, John M. Newman, Jr. and Mark Herrmann, Jones, Day, Reavis & Pogue.

Plaintiff appears by and through its attorneys, John Knox Walkup, Attorney General and Reporter; Cynthia Kinser Carter, Deputy Attorney General; and Jennifer L. Rawls, Assistant Attorney General.

Plaintiff and Defendant have agreed on a basis for the settlement of the matters alleged in the Complaint, and to the entry of this Agreed Final Judgment against Defendant without the need for trial or adjudication of any issue of law or fact.

Defendant, by entering into this Agreed Final Judgment, neither admits nor denies the allegations of the Complaint. Plaintiff and Defendant agree that this Agreed Final Judgment does not constitute evidence or an admission regarding the existence or non-existence of any issue, fact, or violation of any law alleged by Plaintiff.

Defendant recognizes and states that this Agreed Final Judgment is entered into voluntarily and that no promises or threats have been made by the Attorney General's Office or any member, officer, agent or representative thereof to induce it to enter into this Agreed Final Judgment, except as provided herein.

Plaintiff and Defendant waive any right they may have to appeal from this Agreed Final Judgment; and Defendant further agrees that it will not oppose the entry of this Agreed Final Judgment on the ground it fails to comply with the Rules of Civil Procedure or any other grounds, and hereby waives any objections based thereon. The Defendant expressly waives ten day notice of the State's intention to file an action pursuant to Tenn. Code Ann. § 47-18-108(a)(2). This is a Judgment for which execution may issue.

Defendant further agrees that this Court shall retain jurisdiction of this action for the purpose of implementing and enforcing the terms and conditions of the Agreed Final Judgment. The Court finding no just reason for delay;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. GENERAL

1.1 Jurisdiction. This Court has jurisdiction of the subject matter of this action and of the parties. The Plaintiff's Complaint in this matter states claims upon which relief may be granted under the provisions of the Tennessee Consumer Protection Act of 1997, Tenn. Code Ann. §§ 47-18-101, et seq.

1.2 Defendant. For purposes of this Agreed Final Judgment the terms "Defendant", or "Federated", where not otherwise specified, shall mean Federated Department Stores, Inc., and subsidiaries, FDS National Bank, and FACS Group, Inc.

2. VENUE

2.1 Pursuant to Tenn. Code Ann. § 47-18-207, venue as to all matters between the parties relating hereto or arising out of this Order is solely in the Chancery Court of Davidson County, Tennessee.

3. PERMANENT INJUNCTION

3.1 Application of Injunctions. For purpose of paragraphs 3.1- 3.5, the following terms have the meanings set forth below:

A. "Federated" means Federated Department Stores, Inc., FDS National Bank, FACS Group, Inc., any of their officers, directors, employees, representatives, parent companies, subsidiaries, affiliated companies, divisions, successors, heirs, agents and assigns, independent contractors, and any persons with actual or constructive knowledge of this judgment acting in concert and participation with any of them. For purposes of this injunction, Federated's affiliated companies or subsidiaries shall be deemed to include The Bon, Inc., Bloomingdales, Inc., Burdines, Inc., Rich's Department Stores, Inc., Lazarus, Inc., Rich's Department Stores, Inc., d.b.a. Goldsmith's, Macy's East Inc., Macy's West, Inc., and Stern's Department Stores, Inc. This injunction does not apply to Macy's East, Inc., or Macy's West, Inc., to the extent that credit for purchases made is not extended by any of the companies named herein.

B. "Federated customer" means any person who owes, owed, or whom Federated contends or claims to owe, any obligation to Federated, in connection with any extension of credit made by Federated, as the case may be, under a credit agreement with any of the Defendant companies.

C. "Bankruptcy Code" means the United States Bankruptcy Code, Title 11, United States Code.

D. "Reaffirmation Agreement" means the agreement referred to in Section 524 of the Bankruptcy Code.

3.2. Injunctions. Federated is hereby permanently enjoined and restrained from engaging in the following acts or practices:

A. Attempting to solicit or soliciting any Federated customer who is a debtor in a proceeding under the Bankruptcy Code to enter into an agreement to reaffirm debt without first giving the debtor and if represented by counsel, the debtor's attorney, a statement written in plain English, in at least 12-point type, containing the following information:

1. The Federated customer is not required to reaffirm any debt;

2. If the Federated customer reaffirms any debt, the amount of the debt reaffirmed will be subject to the same finance charge that is applied to outstanding balances under the then current credit agreement, or, at Federated's option, a lower finance charge disclosed by Federated.

3. If the customer signs a reaffirmation agreement, a description and example of the payment terms (as described in paragraph 3.2(E) and (F) below) will be mailed to the customer, and his or her attorney, if any, within 10 business days after signing.

4. If the Federated customer reaffirms any debt, the reaffirmation agreement will be filed with the bankruptcy court. Further, Federated will provide the Federated customer, or, if represented by counsel, the Federated customer's attorney, with a bankruptcy court time stamped copy of the reaffirmation agreement. If the signed reaffirmation agreement could not be timely filed, Federated will return the original reaffirmation agreement, or, if the original was filed with the bankruptcy court, a time stamped copy thereof, to the Federated customer or, if represented by counsel, to his or her attorney, and the reaffirmation agreement will be void and of no effect, and will not be enforced by Federated.

5. The Federated customer may rescind the reaffirmation agreement before the Federated customer's discharge or within 60 days of the filing of the reaffirmation agreement with the bankruptcy court, whichever is later. Notwithstanding the foregoing, if Federated makes such solicitation through the debtor's attorney and not the debtor, Federated shall provide the statement described above to debtor's attorney and request that such statement be given to the debtor; provided, however, that if at any point thereafter Federated solicits the debtor directly, Federated shall then provide the statement described above to the debtor;

B. Making any untrue, unfair, inaccurate, deceptive, or misleading statement to any Federated customer about the rights, obligations, benefits, or consequences to the Federated customer of reaffirming or not reaffirming all or any portion of the debt that is owed or may be owed to Federated;

C. Soliciting, obtaining, or enforcing any agreement from a Federated customer to reaffirm debt in violation of any provision of the Bankruptcy Code, including, but not limited to, Sections 362(a)(6); 524(a)(2), (c), and (d); and 727(b) of the Bankruptcy Code;

D. Doing any of the following in any manner connected with inducing a customer who has filed a petition under Chapter 7 to (i.) file a statement of intention or perform the stated intention, as provided in Section 521 of the Bankruptcy Code, (ii.) pay money or agree to pay money on any prepetition debt or on any portion of any prepetition debt, or (iii.) pay money or agree to pay money in connection with the retention of any goods or with Federated's refraining from enforcing or threatening to enforce in any manner any claimed security interest in goods:

1. Engaging in any violation of bankruptcy law, including, but not limited to Sections 362(a)(6), 524(a)(2), and 727(b) of the Bankruptcy Code.

2. Representing, directly or by implication, that Federated has a security interest in goods if the representation is untrue or misleading and Federated knows or by the exercise of reasonable care should know that the representation is untrue or misleading.

3. Representing, directly or by implication, that Federated holds a security interest as a result of the sale of services or insurance.

4. Representing, directly or by implication, the valuation of goods or the value of Federated's secured interest in goods on any basis other than replacement value, within the meaning described in *Associates Commercial Corp. v. Rash*, 117 S. Ct. 1879 (1997), or in the event such replacement value standard is held not to apply to valuation in a Chapter 7 bankruptcy, such other standard of valuation that is clearly recognized as permissible under bankruptcy law by an appellate court with jurisdiction to create binding precedent for the bankruptcy court in which the customer's bankruptcy was filed, or that is expressly required by the bankruptcy court in which the customer's bankruptcy was filed. A valuation standard shall be deemed to be required by the bankruptcy court in which the customer's bankruptcy was filed if the valuation standard is prescribed by local court rule, an administrative order of the court, a judicial order directed to Federated, a written order of the bankruptcy judge before whom the customer's bankruptcy is pending that is generally applicable to creditors, or a published opinion of such bankruptcy judge. Federated shall not be deemed in violation of this subparagraph for failing to use a valuation standard required by the bankruptcy court in which the customer's bankruptcy was filed if (i.) Federated believes that the bankruptcy court's requirement is erroneous; (ii.) Federated's belief is, within the meaning of Bankruptcy rule 9011, well grounded in fact and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (iii.) Federated does not comply with this subparagraph in order to prosecute an appeal seeking the reversal or modification of the bankruptcy court's requirement; and (iv.) Federated diligently prosecutes such an appeal in the customer's case.

5. Misrepresenting, directly or by implication, the replacement value of goods, the value of Federated's secured interest in any goods, the amount a customer is required to pay to redeem goods in which Federated claims a security interest, the nondischargeability of a debt to Federated, or the customer's right to obtain a discharge.

6. Representing, directly or by implication, that a customer may reaffirm a debt without disclosing to the customer all options clearly available to that customer, provided by the Bankruptcy Code, decisions of appellate courts with jurisdiction to create binding precedent for the bankruptcy court in which the customer's bankruptcy was filed and the express requirement of the bankruptcy court in which the customer's bankruptcy was filed, including the right to redeem the goods for their value as an alternative to reaffirmation. In informing the customer about the customer's redemption rights, Federated shall clearly and conspicuously inform the customer of the manner in which the value of the goods was calculated, including the valuation standard used. An option shall be deemed to be recognized as available to the customer under a requirement of the bankruptcy court in which the customer's bankruptcy was filed if the option is prescribed by local court rule, an administrative order of the court, a judicial order directed to Federated, a written order of the bankruptcy judge before whom the customer's bankruptcy is pending that is generally applicable to creditors, or a published opinion of such bankruptcy judge. Federated shall not be deemed in violation of this subparagraph for failing to disclose an option recognized as available to a customer under a requirement of the bankruptcy court in which the

customer's bankruptcy was filed if (i.) Federated believes that the bankruptcy court's requirement is erroneous; (ii.) Federated's belief is, within the meaning of Bankruptcy Rule 9011, well grounded in fact and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (iii.) Federated does not comply with this subparagraph in order to prosecute an appeal seeking the reversal or modification of the bankruptcy court's requirement; and (iv.) Federated diligently prosecutes such an appeal in the customer's case.

7. Representing, directly or by implication, that a consumer transaction confers rights, remedies, or obligations that it does not confer, or which are prohibited by law.

8. Representing, directly or by implication, that nonpayment of any debt will result in, or threatening to take or taking any action to effect, the seizure, garnishment, attachment, retaking, or sale of any property or wages of any person, unless Federated actually intends to take that action, is generally taking the action of the type represented or threatened on a routine and ongoing basis, and the action is not prohibited by law;

9. Using a security interest for the purpose of intimidation. For the purpose of this paragraph, "intimidation" does not include (a) a statement by Federated that it intends to take action to replevy property if Federated actually intends to take that action, is generally taking action of the type represented on a routine and ongoing basis, and the action is not prohibited by law, (b) the filing of secured claims in bankruptcy proceedings, or (c) setting forth in written communications to debtors or attorneys for debtors that Federated claims a security interest in identified goods (provided that the representation does not violate subparagraph 1) and requests a statement of intention pursuant to Section 521 of the Bankruptcy Code;

E. Entering into a reaffirmation agreement that requires equal monthly payments over a fixed period of time, or attempting to enforce or enforcing such a reaffirmation agreement, unless Federated within 10 business days of entering the agreement, mails to the customer at the customer's last known address and to the customer's attorney, if any, a statement disclosing clearly and conspicuously all of the terms of payment, including the total amount of debt reaffirmed, the amount of any finance charge if the reaffirmed debt is paid as scheduled, total of the amount of the reaffirmed debt and finance charge if the debt is paid as scheduled, the annual percentage rate, a schedule of payments indicating the amount and total number of payments, and a notice that the customer may rescind the reaffirmation agreement, before the customer's discharge or within 60 days of the filing of the reaffirmation agreement with the bankruptcy court, whichever is later. At the time the information and notice prescribed herein are given to the customer's attorney, Federated shall also notify the attorney that Federated will not offer objection if the attorney withdraws his or her declaration regarding the matters described in Section 524(c)(3) of the Bankruptcy Code after the attorney has reviewed the information and before the time within which the customer may rescind the reaffirmation agreement has elapsed;

F. Entering into a reaffirmation agreement that requires minimum payments in a specified percentage of the outstanding balance at the time of each payment, or attempting to enforce or enforcing such a reaffirmation agreement, unless Federated within 10 business days of entering the agreement, mails to the

customer at the customer's last known address, and to the customer's attorney, if any, a copy of the then applicable account agreement, and a statement disclosing clearly and conspicuously (1) the total amount of the debt reaffirmed, (2) the amount of the minimum payment due in the first month, (3) an illustrative example, with the disclosures described in subparagraph (E), based on the assumptions that (a) if the reaffirmed debt is \$500.00 or less, the customer makes a regular monthly payment in the amount of 10 percent of the reaffirmed debt, or, if the reaffirmed debt is more than \$500.00, the customer makes a regular monthly payment in the amount of 5 percent of the reaffirmed amount of debt, (b) the customer makes no additional purchases, and (c) the finance charge does not change until the reaffirmed debt is paid in full, and (4) a notice that the customer may rescind the reaffirmation agreement before the customer's discharge or within **60** days of the filing of the reaffirmation agreement with the bankruptcy court, whichever is later. At the time the information and notice prescribed herein are given to the customer's attorney, Federated shall also notify the attorney that Federated will not offer objection if the attorney withdraws his or her declaration regarding the matters described in Section 524(c)(3) of the Bankruptcy Code after the attorney has reviewed the information and before the time within which the customer may rescind the reaffirmation agreement has elapsed. Federated may include in the illustrative example any disclaimers that are needed to ensure that the example is not misleading. Nothing herein shall be deemed to request the customer to pay the regular monthly payment amount stated in the illustrative example or to prevent Federated from altering the terms of all account holders in the state in which the customer resides in the manner provided in the account agreements and Regulation Z;

G. Failing to file, or cause to be filed, all reaffirmation agreements it obtains from debtors pursuant to Sections 524(c) and (d) of the Bankruptcy Code and, if court approval of the reaffirmation is required, copies of the disclosure statements described in subparagraph E or F prior to any scheduled hearing for court approval with the appropriate Bankruptcy Court;

H. Collecting payments on, or attempting to enforce, a reaffirmation agreement unless:

(a) the reaffirmation agreement has been filed with the bankruptcy court;

(b) if the reaffirmation agreement has been signed by a person unrepresented by counsel during the negotiation of the agreement, the court first approves the reaffirmation agreement;

(c) if the reaffirmation agreement has been signed by a person represented by counsel during the negotiation of the agreement, the agreement is accompanied by a declaration or affidavit by the attorney attesting to all of the matters described in Section 524(c)(3) of the Bankruptcy Code.

I. In the event a reaffirmation agreement was not made before discharge, or was not filed in accordance with applicable bankruptcy law, failing to return the original reaffirmation agreement, or, if the original was filed with the bankruptcy court, a court time stamped copy thereof, to the Federated customer or, if represented by counsel, to his or her attorney, with a cover letter stating that the reaffirmation agreement is void and of no effect and Federated will not enforce it;

J. After a reaffirmation agreement is filed, failing to provide to the reaffirming customer by mail, sent to the customer's last known address, a bankruptcy court date stamped copy of the reaffirmation agreement and a letter or other notice in plain English, printed in at least 12-point type, containing the following disclosures, which shall be grouped together and set forth in a clear and conspicuous manner:

- 1.** The customer's agreement to reaffirm a debt to Federated, in an amount which Federated shall disclose in the notice, has been filed with the bankruptcy court;
- 2.** If the customer was not represented by an attorney, the court will have to approve the reaffirmation agreement before it becomes effective;
- 3.** The Federated customer will owe the amount stated in the reaffirmation agreement to Federated after the bankruptcy case is over unless the Federated customer cancels the reaffirmation agreement or, if the debtor was unrepresented by counsel, the court does not approve it;
- 4.** The Federated customer was not required to reaffirm his or her debt and has the legal right to cancel the reaffirmation agreement by sending a written cancellation to Federated at the address shown in the letter or notice;
- 5.** The Federated customer may cancel the reaffirmation agreement by (a) a specified date which Federated shall disclose in the notice that is the date **60** days after the filing of the reaffirmation agreement or (b) the date the bankruptcy court enters an order of discharge, whichever happens later;
- 6.** No specific form is required to cancel the reaffirmation.

K. Reporting any adverse information to credit reporting agencies, or failing to request credit reporting agencies to remove any adverse information previously reported to a credit reporting agency, concerning (i.) any relief granted under this Agreed Final Judgment including restitution and the negation of agreements to reaffirm debt obtained contrary to law and (ii.) the failure of a Federated customer to perform under any agreement to reaffirm debt obtained contrary to law;

L. Removing any positive information from a consumer's credit record or history which Federated reported as a result of a consumer making payments on a legally invalid reaffirmation agreement;

M. Making false, unfair, misleading, deceptive, or untrue statements concerning a customer's obligation to enter a reaffirmation agreement;

N. Ending a credit relationship with a customer based in whole or in part on Federated's relinquishment of its claims to reaffirmed debt, the restitution paid to the customer, or other actions related to the customer that Federated is obliged to take under this Agreed Final Judgment; and

O. When soliciting, obtaining, processing or enforcing reaffirmation agreements, failing to fully comply

with applicable provisions of the federal Consumer Credit Protection Act, state consumer protection acts, and the federal Bankruptcy Code.

3.3 Notice

A. For a period of five (5) years from the date of issuance, Federated shall provide a copy of the injunctive provisions of this Agreed Final Judgment to all current and future officers, employees, and other persons with whom Federated directly contracts having responsibilities for collecting debt from Federated customers who have filed bankruptcy proceedings and the soliciting and obtaining of reaffirmation agreements ("Covered Persons"), and shall obtain from the person receiving a copy of the injunctive provisions a signed and dated acknowledgment indicating the person's name and the fact that the person has received and read a copy of the injunctive provisions. If Federated retains a debt collection agency to perform the functions of Covered Persons through the debt collection agency's officers, employees, or agents, Federated shall deliver a copy of this order to each debt collection agency and instruct the debt collection agency to provide a copy of the injunctive provisions to all of its officers, employees, and agents having responsibilities for collecting debt from Federated customers who have filed Bankruptcy proceedings and for soliciting and obtaining reaffirmation agreements. The debt collection agency shall obtain, from the persons receiving a copy of the injunctive provisions, a signed and dated acknowledgment indicating the person's name and the fact that the person has received and read a copy of the injunctive provisions. Federated shall obtain from the debt collection agency a verification that the debt collection agency has in fact provided copies of the injunctive provisions and obtained the signed and dated acknowledgments as provided in this order. Federated and each debt collection agency shall maintain each original signed acknowledgment for five (5) years. Federated shall provide the copy of the injunctive provisions and obtain the required signed acknowledgment within 30 days of the entry of this Agreed Final Judgment as to current Covered Persons and before any new Covered Persons make any contact with a Federated customer or the Federated customer's attorney for the purpose of collecting any debt or enforcing any security interest.

B. Following the expiration of the requirements of paragraph 3.3 A, Federated shall provide written materials reflecting the substantive content of the injunctive provisions of this Agreed Final Judgment to all future Covered Persons not previously subject to paragraph 3. 3 A. before any such Covered Person makes any contact with a Federated customer or the Federated customer's attorney for the purpose of collecting any debt or enforcing any security interest.

C. On or before April 1, 1998, Federated shall revise its written policies and procedures regarding reaffirmation agreements to ensure that those policies and procedures conform to all applicable laws. Federated will provide to the State Attorneys General Compliance Committee (defined in paragraph 4.2B) by April 1, 1998, at Federated's expense, copies of the revised policies and procedures. Federated shall not, directly or indirectly, communicate orally or otherwise, with any of its employees, agents, or other persons responsible for soliciting reaffirmation agreements on behalf of Federated, in any manner that is inconsistent with these revised written policies.

3.4 Subject to any properly asserted attorney-client privilege and attorney work product claims, Federated

shall make available to the Attorney General, at Federated's sole expense, within 30 days of the Attorney General's written request, copies of all requested documents relating to Federated's compliance with this injunction. In the event Federated needs additional reasonable time to comply with the document request and cannot agree with the Attorney General on the additional time period, Federated may apply to the court for additional time.

3.5 The court shall retain jurisdiction for the purposes of enabling any party to this Agreed Final Judgment to apply to the court at any time for such further orders and directions as may be necessary or appropriate for (a) the construction or implementation of this Agreed Final Judgment; (b) modifying any of the injunctive provisions of this Agreed Final Judgment if the modification is required to comply with bankruptcy law, including modifications that may be required by future amendment to the Bankruptcy Code, (c) modifying any of the injunctive provisions because of new developments or changed legal or equitable circumstances; and (d) the enforcement of this Agreed Final Judgment and punishment of violations thereof.

3.6 The Attorney General agrees not to initiate any proceeding for contempt for a violation of any of the provisions contained in paragraph 3.2 without first (a) contacting Federated's counsel in writing directed to the office of Federated's general counsel at 7 West 7th Street, Cincinnati, Ohio 45202, and to The Responsible Billing Attorney for Federated Department Stores, Inc. c/o Jones, Day, Reavis and Pogue, North Point, 901 Lakeside Avenue, Cleveland, Ohio 44114, (b) describing the nature of the alleged violation, and (c) allowing Federated a period of 30 days, or such additional time as the Attorney General may agree, both to provide a written response to the allegations and if requested by Federated, to meet with the Attorney General's representatives to discuss the alleged violations and alternatives to the initiation of contempt proceedings based on all of the circumstances. Federated's written response shall include, at a minimum, an explanation of how the alleged violation(s) occurred, what action Federated has taken with regard to the specific customer(s) involved, and details of the corrective steps taken by Federated to prevent future violations.

3.7 Because the injunctive relief provided for in this Agreed Final Judgment requires Federated to substantially alter company-wide policies, the injunctive provisions set forth in paragraphs 3.2(A), 3.2(D)(4), 3.2(D)(5) regarding representations of the replacement value of goods and the value of Federated's secured interest in any goods, 3.2(D)(6), 3.2(E), 3.2(F), 3.2(G), 3.2(I), and 3.2(J) shall be effective on and after April 1, 1998. The injunctive provisions set forth in paragraph 3.2(K) regarding requesting credit reporting agencies to remove adverse information shall be effective on and after March 1, 1998. All other injunctive provisions shall be effective upon entry of this judgment.

4. RESTITUTION

4.1. For purposes of this Agreed Final Judgment, the term "Affected Consumer" shall mean each individual who (a) filed a petition for relief under the United States Bankruptcy Code, (b) listed Federated as a creditor, against whom Federated filed a claim, or who owed a debt or alleged debt to Federated, (c) entered into an agreement on or before June 30, 1997, purporting to reaffirm a debt owed

to Federated, and (d) where such agreement was not filed with the bankruptcy court prior to the order of discharge, or was filed with the bankruptcy court and was either (i.) disapproved or rejected by the bankruptcy court or not approved by such court when necessary to result in the enforceability of such agreement, or (ii.) rescinded by the debtor within the time provided by the Bankruptcy Code. For each Affected Consumer identified pursuant to paragraph 4.2 herein, Federated shall:

A. Relinquish any claim to any unpaid portion of the reaffirmed debt and to any unpaid finance charges, late charges, and credit insurance charges assessed in connection with the reaffirmed debt, and adjust the Affected Consumer's account balance to reflect the relinquishment of the claim;

B. Except as provided in subparagraph (C), reimburse the Affected Consumer by check for all money paid on account of the reaffirmed debt and all money paid in finance charges, late charges, and credit insurance charges assessed in connection with the reaffirmed debt until the date compensation under this paragraph is paid. Federated shall issue reimbursement checks in a billing cycle beginning on or before March 16, 1998.

C. This subparagraph applies only to Affected Consumers who had and continue to have charging privileges on a Federated account. To the extent that Federated credited the account of such an Affected Consumer on or before December 1, 1997 with amounts described in subparagraph (B), such Affected Consumer shall have the right to choose whether to retain the account credit or receive a cash reimbursement of such amounts in lieu of the account credit. No later than a billing cycle beginning on or before March 16, 1998, Federated will give to each such Affected Consumer written notice of the right to elect cash reimbursement of all monies paid on account of post-petition charges and a simple postage pre-paid, pre-addressed post card by which the Affected Consumer can communicate his or her choice. The form of the notice and the post card shall be subject to the approval of the Attorneys General Compliance Committee, which approval shall not be unreasonably withheld. Affected Consumers shall have 30 days from the date of mailing the notice to make the election. If, but only if, such an Affected Consumer, notifies Federated of his or her desire to receive such a cash payment, Federated will issue a reimbursement check within 30 days of receiving the request.

D. Issue reimbursements required under subparagraph (B) or (C) in the form of a check and not in any other form (such as a gift certificate or coupon even if so requested by an Affected Consumer).

E. Reimburse the Affected Consumer for the lost time-value of the money paid, by providing the Affected Consumer with interest on the aforementioned sum at the rate of 10% per annum for the full period for which said monies were held by Federated;

F. Waive any security interest which Federated claimed in goods purchased by such Affected Consumer prior to the date he or she filed a petition for relief under the Bankruptcy Code ("pre-bankruptcy merchandise") and not seek to recover any such pre-bankruptcy merchandise.

A. Federated shall use its reasonable best efforts to affirmatively identify, and provide the restitutionary relief set forth in paragraph 4.1 to every Affected Consumer who filed a chapter 7 petition from September 1, 1992 to June 30, 1997, as to Federated (other than Broadway, Inc.) and from June 1, 1990 to June 30, 1997 as to Broadway, Inc. In so doing, Federated shall identify as an Affected Consumer all persons who both owed a debt to Federated (or whom Federated claimed owed a debt) and filed for bankruptcy from September 1, 1992 to June 30, 1997, as to Federated (other than Broadway, Inc.) and from June 1, 1990 to June 30, 1997 as to Broadway Inc. whose Federated account records indicate the existence of a reaffirmation agreement even if no original or copy of the reaffirmation agreement is located, absent contrary direct evidence that the reaffirmation agreement was filed with the bankruptcy court and not thereafter disapproved, rejected or rescinded. In the event that Federated is unable to determine from evidence available to it whether a person's reaffirmation agreement was filed, Federated shall assume that the reaffirmation was not filed and identify such person as such an Affected Consumer. Federated shall not treat as filed any reaffirmation agreement unless either (i.) Federated has a physical copy that is stamped with a court stamp reflecting its filing; or (ii.) a review of either the actual court records or an electronic docket search conducted via PACER (or similar database) reflects that the reaffirmation agreement was filed and does not indicate its disapproval or rejection by the court

4.2 B.1 Federated shall retain a Settlement Administrator to review Federated's compliance with the restitutionary provisions of this judgment, as provided in subparagraphs 4.2 B(2) through 4.2 B(5). The Settlement Administrator shall be an independent firm of certified public accountants or an independent firm substantially experienced in the administration of consumer restitution programs and shall be subject to the approval (which shall not be unreasonably withheld) of the Attorneys General Compliance Committee.

B.2 Federated shall engage the Settlement Administrator to determine that Federated has reasonably examined records, identified Affected Consumers, correctly calculated refund amounts (including interest and additional compensation described in paragraph 4.4), reasonably resolved disputed proofs of claim, actually issued payments or credits to Affected Consumers, paid undeliverable amounts as provided in paragraph 4.5, and undertaken the steps represented by Federated in its Written Summary, described in paragraph 4.7. The procedures to be employed by the Settlement Administrator to determine compliance shall be developed by the Settlement Administrator and Federated in consultation with, and subject to the approval of, the Attorneys General Compliance Committee. The procedures shall include record inspection and statistical sampling, including the sampling of accounts of consumers not designated as Affected Consumers to determine whether the accounts were properly characterized. These procedures shall be set forth in a letter of engagement.

B.3 The letter of engagement shall specify that the Settlement Administrator provide the Attorneys General Compliance Committee with a final report no later than August 3, 1998, unless the Attorneys General Compliance Committee agrees to a later date. The letter of engagement shall prescribe that the final report shall (a) summarize all tasks undertaken by the Settlement Administrator, (b) set forth the Settlement Administrator's certification of Federated's compliance with the restitutionary provisions of this judgment to the extent that the Settlement Administrator has found compliance, and (c) detail all of Federated's deficiencies in compliance, if any. The letter of engagement shall acknowledge that each

Attorney General stipulating to the entry of judgment in substantially this form is an intended user or beneficiary of the report.

B.4 The letter of engagement shall provide that the Settlement Administrator shall make available to the Attorneys General Compliance Committee, within 30 days of written request, and without claim of privilege (except for the Settlement Administrator's attorney-client privilege), copies of all records, documents, reports, and work papers obtained or prepared in connection with the duties set forth herein, and shall also make available to the Attorneys General Compliance Committee a person or persons familiar with the procedures to be performed as required by this judgment or provided in the letter of engagement. If Federated has already produced documents responsive to the request, the Settlement Administrator may identify those documents in lieu of providing duplicates.

B.5 Federated's total expense in connection with the retention of the Settlement Administrator shall not exceed \$100,000.00. The Settlement Administrator's total charge, including costs and expenses, may exceed \$100,000.00 only if (a) the Attorney Generals Compliance Committee requests that Federated retain the Settlement Administrator to perform any service that would increase the Settlement Administrator's charge, including costs and expenses, beyond \$100,000.00 and (b) the total amount of the excess over the \$100,000.00 is (i.) specified in writing, and (ii.) does not exceed the amount of the reserve described in paragraph 5.1 B. The only obligation that may be created herein concerns the reserve described in paragraph 5.1 B, and nothing herein shall be construed to create any liability under any theory of law or equity against any Attorney General or any state or agency thereof.

4.2 C. To facilitate the Settlement Administrator's responsibilities described in paragraph 4.2B, Federated shall make available to the Settlement Administrator all documents, persons, and other information reasonably necessary to review Federated's compliance with the restitutionary provisions of this judgment, including Federated's processes for identifying Affected Consumers, for processing proofs of claim, for calculating refunds and for paying or crediting the accounts of those Affected Consumers entitled to restitution.

4.3 Affected Consumers who filed a bankruptcy petition prior to September 1, 1992 as to Federated (other than Broadway, Inc.) and prior to June 1, 1990 as to Broadway, Inc. and Affected Consumers who filed a bankruptcy petition after September 1, 1992 as to Federated (other than Broadway, Inc.) and after June 1, 1990 as to Broadway, Inc. that Federated is unable to identify pursuant to paragraph 4.2 A herein, shall be entitled to the restitutionary relief described in paragraph 4.1, as provided in this paragraph. Payments to such Affected Consumers under this paragraph shall be made by Federated through FACS Group, Inc., or FDS National Bank, which shall require persons who may be such Affected Consumers to file proof of claim. Federated will accept proofs of claim filed on or before May 15, 1998, in a form approved by either the Attorneys General Compliance Committee or a court of competent jurisdiction and after notice is given in a manner approved by either the Attorneys General Compliance Committee or a court of competent jurisdiction. FACS will review the Proof of Claim and determine if sufficient evidence indicating the existence of a valid reaffirmation agreement has been provided. Failure to complete the proof of claim form with complete accuracy, and/or failure to provide all the requested documentation by the Affected Consumer shall not be a basis for FACS denying the claim, provided

sufficient information is provided to enable FACS, through review of its own records or other Federated records, or court records to establish the existence of a valid claim. Appropriate documentation supporting the existence of a valid claim may include: (a) evidence of a chapter 7 discharge (for example, a copy of the reaffirmation agreement, or a post-petition Federated account statement or correspondence referencing a reaffirmation agreement) or (b) evidence of a pre-bankruptcy petition debt to Federated listed or treated in such bankruptcy (for example, a bankruptcy schedule listing Federated as a creditor, or correspondence indicating the existence of a pre-bankruptcy petition debt) coupled with evidence of some post-bankruptcy petition payment to Federated (for example, a canceled check, money order, payment stub, Federated account statement reflecting a payment credit, or correspondence with Federated referencing such payment). Appropriate documentation may also include such documents and/or combinations of documents as FACS (or the Settlement Administrator) can reasonably determine to be sufficient to satisfy the above requirements. FACS shall use its reasonable best efforts to obtain information necessary to determine whether the claim is valid. If FACS can reasonably determine the existence of a valid claim, the claim shall be processed in the same manner as described in paragraph 4.1. If FACS regards the Proof of Claim as deficient, FACS shall give the claimant an opportunity to cure the deficiency. If FACS continues to regard any corrected Proof of Claim as deficient, FACS will provide the claimant notice of their right to have the matter reviewed by the Settlement Administrator, and will forward the disputed Proof of Claim, and all supporting documentation (including a description of the efforts FACS made on its own to determine the validity of the claim), to the Settlement Administrator. The Settlement Administrator will review the claim, will send a notification to the claimant describing any deficiency in the Proof of Claim, and will give the claimant 30 days of the date of the deficiency notification to correct the claim, providing, if applicable, basic instructions as to how required documentation may be obtained. The Settlement Administrator may also, or in the alternative, request of FACS or Federated that it make additional efforts to establish the validity of the claim, and give FACS or Federated 30 days from the date of the request to make the additional effort. If either an eligible person or FACS or Federated provides documentary information sufficient to satisfy the Settlement Administrator that such person reaffirmed a debt to Federated after filing bankruptcy and shows the amount of payments made to Federated on account of his or her reaffirmed debt, such person shall be treated as an Affected Consumer and paid compensation in the same manner as is described in Paragraph 4.1 herein. If neither the claimant or FACS or Federated can supply credible documentation, the Settlement Administrator shall deny the claim. The Settlement Administrator's review of this proof of claim process shall be at the expense of Federated, subject to the limitations described in Paragraph 4.2 B(5). If a claimant is dissatisfied with the Settlement Administrator's determination of the claim, the claimant may file a motion in a court of competent jurisdiction to have the claim determined.

4.4 Federated shall also make an additional payment of \$500,000.00, to be divided pro-rata among all Affected Consumers based upon the amount of compensation paid to each Affected Consumer by Federated in accordance with paragraphs 4.1 B. and 4.3 (not taking into account any money payable under paragraph 4.1 E), under the supervision and direction of the Settlement Administrator, except that if an Affected Consumer's pro rata share is five dollars (\$5.00) or less, that pro rata share shall not be paid to the Affected Consumer but instead shall be aggregated with all other pro rata shares of five dollars (\$5.00) or less and paid to the Massachusetts Attorney General for the consumer protection fund described in paragraph 5.2.

4.5 If any payment to an Affected Consumer is returned undeliverable, Federated shall take or cause to be taken reasonable steps, including skip-tracing, to locate the Affected Consumer. If thereafter, the Affected Consumer is still not located (or an Affected Consumer's check is not cashed within six months), any funds payable under paragraphs 4.1 to 4.4 herein but not deliverable shall, pursuant to this Agreed Final Judgment, be promptly, but in no event later than January 15, 1999, paid to the Attorney General of the state of the last known address of such Affected Consumer.

4.6 Any funds payable under this section herein to any Affected Consumer whose last known address is in the State of Tennessee but not deliverable, pursuant to this Judgment, shall be treated as unclaimed property in the possession of the State of Tennessee pursuant to the Uniform Disposition of Unclaimed Property Act, Tenn. Code Ann. § 66-29-101, et seq. These funds shall be delivered to the Treasurer as set forth in Tenn. Code Ann. § 66-29-112, covering miscellaneous unclaimed property held by another person. The Defendant shall provide whatever information is needed by the Treasurer to handle the funds as unclaimed properties. The Defendant shall continue to provide a check (if appropriate) and this information each year as necessary to provide updated information to the Treasurer. The Defendant shall provide a report to the Attorney General and Reporter within one (1) year after entry of this Order which details the amount delivered to the Treasurer for treatment as unclaimed property under the State statute.

A. On or before October 30, 1998, Federated shall provide to the State of Tennessee, Attorney General's Office, Consumer Protection Division, 425 Fifth Avenue, North, 2nd Floor, Nashville, TN 37243, Attention: Cynthia Kinser Carter, a Final Certification Report containing the following information:

1. A certification, that all restitutionary relief provided for herein due to all eligible Affected Consumers in Tennessee has been paid. The report shall also verify and certify compliance with each provision of this Order related to restitutionary relief.

2. An alphabetical list of the name and address of every Affected Consumer, as defined herein, residing in Tennessee, together with the total amount of compensation, including the refunded amount including interest, the pro rata share and the amount of any canceled debt for such Affected Consumer under paragraphs 4.1 - 4.4 herein.

It is possible that, as of October 30, 1998, restitution will not yet have been paid to a small number of Affected Consumers who submit proofs of claim that are disputed. If so, Federated will submit a Supplemental Final Certification report, within 30 days after the last disputed proof of claim is rejected or paid, explaining the resolution of all claims not described in the Final Certification Report.

B. Federated shall provide for review by the Tennessee Attorney General, Consumer Protection Division, within 30 days of written request, all records, documents and personnel reasonably necessary to ascertain Federated's compliance with the restitutionary provisions of this Consent Judgment as to Affected Consumers in Tennessee (for example, in response to inquiries concerning specific Affected Consumers in Tennessee).

C. Nothing in this paragraph shall limit the Attorney General's right to request or obtain information from Federated as otherwise provided in this Agreed Final Judgment or as provided by law.

D. Federated shall also provide to each member of the Attorneys General Compliance Committee, one copy of each report provided to the States Attorneys General described in paragraph 4.6 A herein. Until October 30, 1999 Federated shall provide for review by the Attorneys General Compliance Committee, at Federated's expense, within 30 days of written request, all records, documents and personnel reasonably necessary to ascertain Federated's compliance with the restitutionary provisions of this Judgment.

4.7 Federated, at its sole expense, not later than July 1, 1998, shall provide to the Attorneys General Compliance Committee, a written summary (the "Written Summary") describing the process Federated used (a) to identify Affected Consumers as required by paragraph 4.2 herein and to locate records of people filing proofs of claim as described by paragraph 4.3 herein; (b) to calculate the amounts owed to Affected Consumers; and (c) to credit, or actually pay those amounts, as the case may be, to Affected Consumers, which process Federated has partially undertaken voluntarily.

4.8 Except for pending disputed claims, all payments by Federated to Affected Consumers provided for by paragraphs 4.1 - 4.4 herein shall be made not later than July 1, 1998. This obligation and Federated's restitution obligations hereunder shall not apply as to any person who does not relinquish all claims that the person may have against Federated based on Federated's obtaining or collecting upon a reaffirmation agreement from that person in violation of law.

4.9 Federated is responsible for all costs associated with providing restitution to consumers as set forth in section 4 of this Order.

5. PAYMENTS TO THE STATES

5.A. On February 6, 1998, Federated paid \$2,500,000.00 to the States Attorneys General, via an electronic bank transfer payable to the Washington State Office of the Attorney General. Except as provided in paragraph 5.1B, the Washington State Attorney General agrees to hold these monies, in an interest bearing trust account, for distribution among any state that exercises its choice to participate in the fund by executing a Consent Decree with Federated in substantially the same form as this one on or before February 17, 1998. This money, including interest accrued, will be distributed to participating states proportionately based upon the number of affected Consumers in each state identified as of February 2, 1998 pursuant to paragraphs 4.2 herein as that number relates to the total number of Affected Consumers in all participating states. The members of the Attorneys General Compliance Committee will, however, each receive a minimum payment of \$40,000.00 as the states responsible for investigating this matter and negotiating this judgment. Except for those funds held in reserve pursuant to paragraph 5.1 B, the money, including interest accrued, will be distributed to the participating states on or before March 16, 1998. Washington State's proportional share of the \$2,500,000.00 paid pursuant to this paragraph shall be distributed as follows:

(A) The sum of Nineteen Thousand Five Hundred Dollars and 00/100 Cents (\$19,500.00) shall be paid to the State of Tennessee for reasonable and appropriate attorneys' fees and costs of investigation, prosecution and monitoring for compliance of this matter, which may be used for consumer protection purposes at the sole discretion of the Attorney General. Said payment shall be made payable to the State of Tennessee and shall be delivered from the funds held in escrow by the Washington Attorney General.

(B) The sum of Five Thousand Dollars and 00/100 cents (\$5,000.00) shall be paid to the Tennessee Division of Consumer Affairs to fund a consumer education. Said funds shall be distributed at the sole discretion of the Director of the Division of Consumer Affairs. Said payment shall be made by the Washington Attorney General providing the Tennessee Attorney General with a check made payable to the State of Tennessee Division of Consumer Affairs.

(C) The remaining sums due the State of Tennessee shall be paid to the State of Tennessee's general fund as a civil penalty for Federated's unfair and deceptive acts and practices described in the State's Complaint pursuant to Tenn. Code Ann. § 47-18-108(b)(3). Said payment shall be provided from the funds held in escrow by the Washington Attorney General by providing the Attorney General with a check made payable to the State of Tennessee General Fund.

To the extent that the states of Alabama, California, Florida, Georgia, Indiana, Kentucky, Massachusetts, New Jersey, New York, Ohio, Oregon, Pennsylvania, Tennessee, and Washington do not enter Agreed Final Judgments with Federated on or before February 17, 1998, unless that date is extended in writing by Federated, the Washington Attorney General will return to Federated \$20,000.00 (at the time distribution to the participating States is made) for each such State that does not participate. However, this limitation shall not apply where (a) Federated has failed or refused to execute a Agreed Final Judgment in substantially the same form as this Agreed Final Judgment; or (b) where a State and Federated have filed in State Court a Agreed Final Judgment but such Agreed Final Judgment has not yet been approved by the Court.

B. Of the funds held as described in 5.1 A, the Washington State Attorney General shall hold \$150,000.00 in reserve in an interest bearing trust account. These funds held in reserve may be used, at the sole discretion of the Attorneys General Compliance Committee, to pay for services offered by the Settlement Administrator in excess of Federated's maximum obligation as provided in paragraph 4.2 B. Funds held in reserve pursuant to this paragraph that are not expended for the Settlement Administrator shall be paid to the states as provided in paragraph 5.1 A, except that distribution to the States of any funds not expended for the Settlement Administrator shall not be distributed to the States prior to September 12, 1998.

5.2 Federated shall also pay \$240,000.00 dollars to fund consumer education or consumer protection projects to the States Attorneys General, via a check payable to the Massachusetts Attorney General's Office. These funds shall be held in an interest bearing account (the "Fund Account"), created by the

States Attorneys General, and shall be used for consumer education and consumer protection purposes, including education concerning consumer credit and consumer rights and responsibilities in the bankruptcy context. These funds and the interest generated therefrom shall not be commingled with other funds except to the extent that funds have been paid for similar purposes by other creditors pursuant to Agreed Final Judgments relating to reaffirmation policies or practices. Distributions from the Fund Account shall be made at the discretion of a Special Committee composed of the representatives of three Attorneys General, subject to the approval of the respective Attorneys General: the Attorney General of Massachusetts, the Attorney General of California, and the Attorney General of another State which shall be selected on an annual rotating basis, in the first instance by the Attorneys General of Massachusetts and California and thereafter by all three members of the Special Committee. Such representatives of these three Attorneys General shall have knowledge and experience in enforcing consumer protection law as full time civil or criminal prosecutors of consumer law violations. The Special Committee shall give due consideration to the recommendations, if any, of the Office of the United States Trustee regarding distributions. Until August 1, 2007, distributions from the Fund Account shall be made solely from the interest and other returns generated by the Fund Account and no expenditures shall be made from the principal of the Fund Account. Thereafter, the Special Committee may authorize expenditures from the principal of the Fund Account provided that: (i.) such authorization by the Special Committee is unanimous; and (ii.) in no event shall annual expenditures from the principal of the Fund Account, if authorized, exceed 5 per cent of the annual Fund Account balance. The Special Committee may also authorize an annual payment from the Fund Account to help defray reasonable administrative costs, which annual payment shall not exceed 1% of the Fund Account balance in any given year. The administrative fee, if any, shall be verified by the Special Committee as reasonable and appropriate for administrative costs actually incurred. Not less than once each year, the Special Committee shall report to the Attorneys General Compliance Committee concerning the Fund Account and the Activities funded thereby.

6. ATTORNEY'S FEES AND COSTS

6.1. Pursuant to Tenn. Code Ann. § 47-18-108(b) Plaintiff shall recover, from the payments made to State of Tennessee, Attorney General's Office - Attorneys' Fees and Costs pursuant to paragraph 5.1, costs and reasonable attorney's fees incurred by the Plaintiff in pursuing and monitoring this matter in the amount of \$19,500.00.

7. TERMS OF PAYMENT

7.1 Monies paid pursuant to paragraphs 4.5, 5.1 and 6.1 shall be delivered to the State of Tennessee, Attorney General's Office by certified check. Interest on any unpaid balance shall accrue at 12% per annum.

7.2 The payments and actions required in Sections IV., and V. of this Agreed Final Judgment will also be required by Agreed Final Judgments or Settlement Agreements entered by Federated in other courts. Federated is required to make those payments or take those actions only once, despite the existence of

multiple judgments or agreements requiring that the payments be made and actions be taken.

8. REPRESENTATIONS AND WARRANTIES

8.1 This Agreed Final Judgment resolves the above-captioned action and the State of Tennessee will not bring any other action against Federated based upon the facts alleged in the Complaint for acts occurring prior to entry of this Agreed Final Judgment.

8.2 Jurisdiction is retained for the purpose of enabling any party to this Agreed Final Judgment to apply to the Court for enforcement of compliance with this Agreed Final Judgment, to punish violations thereof, or to modify or clarify this Agreed Final Judgment.

8.3 Acceptance of the Order by the State shall not be deemed approval by the State of any of Federated's advertising or business practices.

8.4 Federated shall not represent or imply that any procedure or other acts or practices hereafter used or engaged in by Federated have been approved, in whole or in part, by the State.

8.5 Neither Federated nor anyone acting on its behalf shall state or imply or cause to be stated or implied that the Attorney General or any other governmental unit of the State of Tennessee approved, sanctioned, or authorized any practice, act, or conduct of Federated. However, nothing in this paragraph shall prohibit Federated from stating to any person that Federated has entered into a settlement with the State of Tennessee resolving the State's complaint, or from providing copies of this Agreed Final Judgment to any person.

8.6 Nothing in this Order shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State of Tennessee. In addition, this Order shall not bar the State or other governmental entity from enforcing laws, regulations or rules against Federated.

8.7 Nothing in this Order shall be construed as relieving Federated of the obligation to comply with all state and federal laws, regulations or rules, nor shall any of the provisions of this Order be deemed to be permission to engage in any acts or practices prohibited by such law, regulation, or rule.

8.8 The Attorney General will not bring a contempt action against any natural person unless that person participates in, knowingly assists, or aids and abets a violation of the injunctive provisions.

8.9 The titles and headers to each section of this Order are for convenience purposes only and are not intended by the parties to lend meaning to the actual provisions of the Order.

9. PENALTY FOR FAILURE TO COMPLY

9.1 Defendant understands and acknowledges that pursuant to the provisions of the Tennessee Consumer

Protection Act, Tenn. Code Ann. § 47-18-108 (c), any knowing violation of the terms of this Order shall be punishable by civil penalties of not more than Two Thousand Dollars (\$2,000.00) for each violation, in addition to any other appropriate sanctions including but not limited to contempt sanctions and the imposition of attorneys' fees and civil penalties.

9.2 Defendant understands that upon execution and filing of this Order, any subsequent failure to comply with the terms hereof is prima facie evidence of a violation of the Tennessee Consumer Protection Act.

10. PRIVATE RIGHT OF ACTION

10.1 Nothing in this Order shall affect the right of a consumer to commence a private cause of action against Federated.

11. PAYMENT OF COURT COSTS

11.1 All court costs associated with this action and any other incidental costs or expenses incurred thereby shall be borne by Defendant. No costs shall be taxed to the State as provided by Tenn. Code Ann. § 47-18-116. Further, no discretionary costs shall be taxed to the State.

IT IS SO ORDERED, ADJUDGED AND DECREED.

CHANCELLOR